App. F. IX-4

Previous References

1929–30
(Law)

File No. 44–29
Serial Nos. 1–15

Later References
Law 44-29-11

Preserve
17/1/43

General and Revenue Secretariat.

Serial Nos. Fifteen

Part B for September 1931

SUBJECT.

Civil Revision Petition No. 325 of 29-30 on the file of the High Court of Mysore (D.C. Bangalore Vs Srinivasaiya)

15) To The D.C. Bangalore Dist

No. P1465 d/ 4.9.31

Forwards a copy of the order of the High Court & instructs to take necessary action to get the sum in the Closepet Munsiff's Court of Costs & to execute the decree as to costs thus awarded in both the Courts by means of proper proceedings in execution

General and Revenue
Secretariat

Kaid File No. 44 of 1929

Serial
No.

Letter No: L.P. 46/29 dated 27th
'29 from D.C. Bangalore, reporting about the facts & the institution of O.S. 190 of 29 on the file of the Munsiff's Court, Closepet, by one Yajman Srinivasia.

(1) The facts of the case are clearly State in the P.U.D.

(2) If the allegation of a prior mortgage in favour of the plaintiff is made out, Govt cannot resist the plaintiffs' claim to have the property sold out to realis the amount due to him

(3) The plaint copy is not sent, and it is not clear why the D.C. is made a party instead of the Govt since the mortgage in favour of Govt stands in the name of the Dewan. If the Govt is made the defendan then the question of notice becomes material since no suit can be instituted against Govt without the statutory notice (Sec 80 C.P.C. In the case of a public officer however, ~~Suits need~~ notice is necessary only if the suit is in respect of any act purporting to be done by such officer in his official capacity

(4) The D.C's contention that he or the Govt ~~are~~ is no necessary party to the suit cannot be upheld. Under order 34 rule 1, he is a necessary party since he is intere

Note—Contn. Sheet

in the mortgage security being a first mortgagee –

(5) A lawyer ~~was~~ at Closepet to be engaged to ~~defend~~ appear on behalf of D.C to conduct the defence and watch interests of Govt. in the suit.

(6) Yes. Draft put up.

D. M.
1/10

30.9.29

Draft to D.C. put up.

(7) Issue
D. M.
1/10

1/10

The Deputy Commr
Bangalore

P 1935 dated 1.10.29
intimating that a lawyer may be engaged at Closepet & instructed to prepare a written stmt.

The D.C. Bangalore
No. 46 of 24-2-30.

With reference to the above. States that case is posted for 3rd March for defence. The advocate engaged for the case of [illegible] written petition may be filed & [illegible]
[illegible]

(8) The D.C. has sent the records for instructions regarding the further action to be taken [illegible] the matter. As the case is fixed for the 3rd I state that the above also has not yet [illegible] written statement in the case.

Submitted for orders. The Counsel engaged in the [illegible] is of opinion that there does not seem to be [illegible] valid defence to the suit on the merits. The Govt. Advocate may be consulted.

27/2

27/2

27/

(9) The copy of the [illegible] order over-ruling the objection as to want of notice refers to cert[illegible] decisions which have to be ex[illegible] There is no time to examine the G.P. obtain orders before 3-30. The D.C. may be asked to [illegible] the A.O.C. to move for an a[illegible] as the [illegible] is made without a

Serial No.

To The Deputy Commr,
P 4573 dated 28. 2. 30.
intimating that pending invest
of the points of law raised, the a
at Closepet be requested to take a
adjournment on 3rd March 1930 —

The plaintiff is said to be a pri
mortgagee. The D.C. Bangalore is ma
party to the suit, since a land improv
loan is granted to the mortgagor.

The Advocate on behalf of the D
raised a preliminary point as to wa
of the statutory notice under Sec 80 C.
The Munsiff has decided this point a
e D.C. holding that ~~it~~ a notice of s
gainst a Public Officer is not nece
f the suit is not based on ~~a contract~~ a
elying particularly on 48 All 821 a
930 Bom 11, in both of which the official Reci
f an insolvent's property was made
efendant to a mortgage suit by a pri
mortgagee, The Munsiff has held that
otice is necessary in the present Cas
both the cases there was no ~~officia~~
mission on the part of the Offl: Receiver which gave rise to the cause
or which the suit was brought. In the pr
se also, the suit is not based on any
r omission of the D.C. in his official ca

but he is a defendant, simply because he
a puisne mortgagee.

In this view of the case it appears t
be a futile attempt to go in revision to t
chief Court against the order of the Munsi
But as noted in para 3 supra, the suit il
ought to be against the Govt, since the
mortgage for the loan stands in the na
of the Dewan of Mysore. And under sec 8
notice is necessary in all suits, whatever
their nature, if they are against Govt.
(54 I.A. 338 at 357 P.C).

It is said that the advocate at
Closepet is of opinion that there is no valid
defence to the suit. But from a perusal
of the bond executed by Doddegowda in
favour of the Dewan, it appears that
sec 7 cl (c) of the Land Improvement Loans
Regn, 1890 applies, in which case, ~~the~~ Govt
have the right to recover the amount
due, out of the land as if it were arrears
of land revenue due in respect of that land.
Consequently the land can be sold free
from incumbrances created by the mortgagor
over his interest in the land, even though
such ~~a thing~~ an encumbrance has been ~~done~~ created before
the date of the order granting the loan.
The effect of this is that the lien in favour

Serial No.

of Govt becomes by Statute a first charge ~~though in point of fact it may be~~. It is therefore said at page 341 of the Rev: Manual that no reference need be made to the Regn Deptt for encumbrance certificates in the case of loans under L. I. & Regn. where the land to be improved is itself accepted as sufficient security, the interests of Govt being safeguarded by Sec 7 of the Regn.

Perhaps the D.C's attention may be drawn to the points mentioned above so that proper instructions may be issued to the Advocate at Closepet for preparing a draft D.S.

If however it is thought expedient to file a revision petn against the Munsiff's order on the question of notice, the Govt Advocate may perhaps be consulted in the matter—

DDP
8/6/30

I agree as at A.
The D.C's attention sho: be drawn to the Regn & asked to instruct the Adv: to prepare a proper

General and Revenue
Secretariat

App. F. III—2]

Rev File No. 44 of 1929

Serial No.

Draft to Govt Advocate forwarding copy of the Munsiff's order for opinion regarding the filing of a revn appln put up.
Another draft to D.C. Bangalore on the lines indicated at A also put up for orders.

5·3·30

Issue both
5/3
5/3

5 To the Govt Advocate
P 4809 d 6·3·30.
Calling for opinion as to whether a revn may be filed.

6 The Deputy Commr, Bangalore—
P 4810 d 6·3·30
returning the records & stating points for preparing the defence in the case.

7 Letter from the Govt Advocate (No 672 of 15·3·30) intimating that this case is a fit one for action under sec 115 C.P.C.

etter C8-L.P/46·29·30 dated 15·3·30
n D.C. Bangalore forwarding the draft
8 for approval—
Draft G.O. sanctioning the filing

General and Revenue
Secretariat.

(a) File No. 11 of 1929.

Serial No

[illegible] revenue

order & may be approved. Draft returning the same to D.C. put up. The date fixed for filing the defence is ~~19 6~~ 19·3·30

DMP
17·3·3

V. Issue this ⊕

3.30

It is a fit case for filing a revision appln. The Govt: Advt: is of the same opinion. Draft G.O. be appd.

17/3

General and Revenue
Secretariat

Law File No. 44 of 1939

Serial
No.

11 Letter no 7 the Govt Advocate intimating that orders passed allowing the petition by Govt.

Sub^d for perusal

Copy of the Judgment may be awaited

TSD
17/6

Legal R^r (Sd) N. R. 17/6

Chief Sec^y (Sd) [illegible] 20/6

Sec. A. (Sd) [illegible] 20/6. (Sd) [illegible] 20/6.

12 Letter no 26 dated 14th July 1931 from the Govt Advocate forwarding for sanction a bill for Rs 50/- of Mr. M. Ramachandra Rao, being his fees for services rendered in the Case.

This bill has to await the copy of the Judgment from the Govt. A.D. If necessary Govt. A.D. may be reminded. S for orders

TSD
16/7

Issue
[illegible]
16.7

Issued no. P. 424 dated 20.7.31

Letter no 47 dated 22nd July 1931 from the Govt. A.D. intimating that a copy of order was applied for on 15th inst and that will be forwarded as soon as it is recd.

It is for orders whether the bill is to await the copy of the judgment.

TSD
23/7

Yes.
[illegible]
23/7

NOTE— Contn. Sheet

nt. Advocate forwarding a copy of
lgment in C.R.P. 325 [illegible] on the [illegible] of
the H

copy of the judgment is flagg
r. M. Ramachandra Rao has sent in a bill
Rs 50/- being his fee for the services
dered in the case as Govt. Advocate.
The fee assessed by the court is only ~~[illegible]~~ Rs 10/-
~~Advocate's fee to the petitioner (D. O. B'lo~~
the remuneration is usually calculated
rding to the nature of the work done
ft G.O. sanctioning is put up for Com
Subd for orders

TSD
5/8

The point involved in the revision petition filed by Mr. M. R. Rao when he was a Govt Advocate, ~~was~~ is an important of law – as to whether a previous notice under sec 80 C.P.C is necessary for suits against Public officers when the cause of action is a contract. The Revn petn was heard before a bench of two Judges & the decision of the High Court is going to be an authority on the point ~~so~~ far as Impera is concerned.

In view of this, the b
may perhaps be passed.

Chief Secy)

MR
5/8

I agree. Subd for sanction

Second Member
Thro' Fin. Secy

MM
8/8/31

W 11/8

Serial No.

W.P. ?

MP
12/8

Dft G.O. sanctioning already put up. May ... clean draft please

TSD 13/8

MP 14/8

Fair dft. subd.

TSD 14/8

For approval of the draft (for Secy)

MP 14/8

Issue to-day
17.8

MP 18/8

Finl. Secy has agreed
Dft and fair subd.

19/8/31

19/8/31

GENL. & REV. SECRETARY.
14 AUG 1931
No. 1773

18. AUG. 1931
GENL. & REV.

e suit in the Chiapet Ct will have to dismissed as against the D.C with its which also he has to recover by sec^n proceedings – Draft please

MP
28/8

Dft is put up accordingly
SD
29/8

~~Issue~~ may be approved
Gen Secy)

MP
31.8

[illegible]
3.9

Issue
MP 3/9

To

The D.C. B'lore

no. P. 1445 dated 4.9.31 forwarding the order of the H.Ct. and instruct necessary action to get the suit in the Munsiff's Court dismissed with costs, and the decree as to costs there in both the Courts by means of proper operation.

A report as to the action taken by the D.C. may be called by 4/10/

The report is not yet
A draft is put up
[illegible] 23/10 Another reminder is put up
MP 4/9
5/10 Issue MP 5/7

GENERAL SECRETARY
31 AUG 1931
No. 1629

TYPING SECTION
3 SEP 1931
GENL. & REV. SECTT.

TYPING SECTION
5. OCT. 1931
GENL. & REV. SECTT.

In all future communications
please quote—
No. L.P.46/29.
Enc. One file.

OFFICE OF THE DEPUTY COMMISSIONER,
BANGALORE DISTRICT

Dated, Bangalore, the 27th September 1929

FROM
K.V.Anantaraman, Esq., B.A.,
~~A. K. SYED TAJ PEERAN, ESQ., B.A.,~~
Deputy Commissioner,
Bangalore District.

To
P.Mahadevayya, Esq., B.A., B.L.,
Law Secretary to the Government of Mysore,
Bangalore.

Subject :-

In forwarding herewith the records relating to the grant o
Land Improvement Loan to one Doddegowda of Anigere Village,
Chennapatna Taluk in 1916, I have the honor to state as follow
Doddegowda applied for the grant of a Land Improvement Loa
f Rs.250/- on the hypothecation of dry Survey No.102/2(2 acre
6 guntas assessment 2-12-0)of Anigere village, Chennapatna Taluk
hich was in the khate of one MancheGowda as also a house Khan
ari No.15 of the same village and stated that he was in the p
ession and enjoyment of the entire Survey No.102/2 and had no
reated any encumbrances on it. The villagers gave a Mahazar
which is attested by 5 illiterate persons including the Patel)
orroborating the statement of DoddeGowda. On 10th November 19
ne SiddeGowda and another alleged that kathedar ManchеGowda wa
ead, that DoddeGowda was not in enjoyment of the entire Survey
o.102/2 and that they and DoddeGowda enjoyed the land in share
t was stated that the Sub-Registry Office registers did not di
close that there were any encumbrances on the survey No. On 17t
November 1916 the then Amildar(Mr.V.Rajagopalachar)sanctioned t
grant to DoddeGowda of a loan of Rs.250/- repayable in ten annu
instalments with interest, on the hypothecation of Survey No.10
and house kaneshumari No.15 in question. From the records it i
seen that a sum of Rs.214-6-2 as shown in the margin is outstanding against the grantee at present.

920-21	Rs.17-12-2
921-22	32-12-2
922-23	32-12-2
923-24	32-12-2
924-25	32-12-2
926-27	32-12-2

One Yejman Srinivasiah has now filed
a suit in the Munsiff's Court,Closepet
O.S.No.190/29-30 for recovery of certai

certain loans given by his undivided father to DoddeGowda referred to above in 1913. In this suit Plaintiff Srinivasiah included the wife of Doddegowda referred to above, the Deputy Commissioner, Bangalore District and one Linegpwda as 1st, 2nd and 3rd Defendants respectively. Srinivasiah explains in the plaint that Doddegowda obtained a loan of Rs.150/- in April 191 from his father hypothecating Survey No.102/2 in question, that a sum of Rs.300/- plus costs etc, is due to him from the 1st --defendant(kalamma)now, that the Deputy Commissioner, Bangalore District has been joined as a defendant, as a loan has been advanced to Doddegowda by Government on the hypothecation of survey No.102/2, subsequent to its hypothecation to him and that Lingegowda has been made the 3rd defendant as he got the survey No. similarly mortgaged to him. The plaintiff has prayed that the defendants(plural) should be made to pay the Rs.300/- in question with costs etc and that in the event of a failure to pay the sum, Survey No.102/2 should be ordered to be sold in satisfaction thereof. Srinivasiah has also petitioned the Amildar on 1st September 1929 praying that the amount due to him may be caused to be paid to him and that if it is not possible the survey no.in question may be released and the Government loan recovered by proceeding against --Doddegowda's other properties.

No notice of the suit filed by Srinivasiah has been sent by him to the Deputy Commissioner or the Chief Secretary to Government as required by Section 80 C.P.C. but the summons has been forwarded by the Munsiff for service on the Deputy Commissioner and it is seen therefrom that the case is posted to 7th October 1929. If, as --alleged by Srinivasiah, he is the 1st mortgagee, Doddegowd's subsequent 2nd mortgage of survey No.102/2 to Government cannot in any way affect his(Srinivasiah's) interests as the prior encrumbrances takes precedence over a subsequent one and has first to be satisfied in law. In this view it seems that it was unnecessary for Srinivasiah to have made the Deputy Commissioner, a party to the suit. Under the circumstances I request you to be so good as to issue instructions regarding the further action to be taken in the case.

The Sub-Division Officer will be directed to proceed immediately

immediately against the house mortgaged to Government.

I have the honor to be,
Sir,
Your most obedient servant,

K V Anantharaman

Deputy Commissioner,
Bangalore District.

• L.S.R.

27/9

Appendix F G—1.

SUBJECT..

....

....

Diary No. of letter replied to.......................

General and Revenue Secretariat

( )

the 192

Date of issue 1-10-29

Signed by M NS

st of enclosures...........................

Copied by.............................

Examined by.............................

Section Law

File No. 44-29

Serial No. 2

No.

Inte [illegible] 1935 [illegible]

To

The Deputy Comr

Bangalore.

Sir,

With reference to your letter No: L.P.46/29 dated 27th Sept 1929 forwarding records connected with the grant of a Land Improvement Loan to one Doddegowda of Anigere village, Channapatna Taluk in 1916, I ~~have the~~ am directed ~~honour~~ to state that a lawyer at Closepet may be instructed to appear on 7-10-29 in the suit

over

O.S. 190 of 29-30 on the file of the Munsiff's Court, Closepet, on behalf of the 2nd defendant (Deputy Comr, Bangalore) and take an adjournment for filing the defence, if any. In the meanwhile, you can kindly issue the necessary instructions to the lawyer ~~engaged~~, for the preparation of ~~the~~ a draft written statement and send up the same with the necessary records and copy of the plaint to this office for scrutiny and approval as usual under the Legal affairs Rules.

The enclosures to your letter are herewith return

I have etc

IN ALL FUTURE COMMUNICATIONS
PLEASE QUOTE--
No. G8-L.P.46/29-30.
ENC. 1 file.

TEL. ADDRESS-" DEPCOM."
POST BOX NO. 34.

OFFICE OF THE DEPUTY COMMISSIONER,
BANGALORE DISTRICT.

Dated, Bangalore, the 24th February *19*30.

FROM B. Narayanaswami Iyengar, Esq., B.A., B.L.,
~~A K Syed Taj Peeran Esq~~
Deputy Commissioner,
Bangalore District.

To

P. Mahadevayya, Esq., B.A., B.L.,
Secretary to the Government of Mysore,
Law Department,
BANGALORE.

SIR,

SUBJECT:— Recovery of Land Improvement Loan advanced to Doddegowda of Anigere Village, Chennapatna Taluk in 1916.

Adverting to your letter No.P.1935/Law 44-29 dated 1-10-39 on the above, have the honor to state that on the recommendation of the Sub Division Officer, Closepet, Mr C. Narayana Sastry, B.A., LL.B., Advocate, Closepet, was instructed to take up the case. The Sub Division Officer, Closepet, has now forwarded an application from Messers C. N. Sastry and K. Subba Rao, Advocates, that when they took a preliminary objection that the suit could not be maintained for want of a statutory notice it was overruled by the Munsiff. The case is posted for the 3rd March 1930 for defence if any on merits.

As detailed in my letter No.L.P.46 dated 28-9-29 it is seen from the records the loan has been granted subsequently on the strength of the encumbrance certificate of the Sub Registrar. The Advocates state that there does not seem any valid defence to the suit on the merits except putting the plaintiff~~s~~ to proof of his document and also the payment which he pleads in order to save limitation. Even then the evidence would only be one-sided. The Advocates therefore opine that a revision petition may be filed against the order of the Munsiff dismissing the preliminary objection petition.

Records ending with No.A1-474/29-30 dated 21-2-30 of the Sub Division Officer, Closepet, are herein submitted for early instructions regarding the further action that is to be taken in the matter, as the case is posted for the 3rd March 1930. The Advocate has not yet sent the written statement as required in this office letter No. L.P.46 dated 15-10-1929.

I have the honor to be,
Sir,
Your most obedient servant,

Deputy Commissioner.

7cg.

Appendix F G—1

SUBJECT......................................

Diary No. of letter replied to..............................

General and Revenue Secretariat

( )

the 192

Date of issue.................... 28/2/30

Signed by..............................

List of enclosures..............................

Copied by..............................

Examined by..............................

then the Case comes at for hearing

~~2) The records are returned herewith~~

Section Law

File No. 44-29

Serial No. 1

No. R 451-

To

The D.C. Bangalore

Sir

With reference to the correspondence ending with your letter no 6.8-L.P.46/29-30 of 24th Feby 30 regarding the recovery of Land Improvement Loan advanced to Dodde Gowda of Anigere Village, Chennapatna Tq in 1916, I am directed to state that the point raised has to be examined & Government ~~reference having been made without allowing sufficient time to Govt to pass orders~~, in the mean time the Advocate may be instructed to move for an adjournment ~~of the case which stands posted~~ to the 23rd March 1930

over

I have

your

WD068—GPB—20,000—1.8

Section Law

File No. 44-29

Serial No. 5

Diary No. of letter replied to....................

No.

Immediate : L 4809 Re

General and Revenue Secretariat

the 192

Date of issue 6/3/30

Signed by M. NS

To

The Government A

Bangalore

Sir

I am directed to forward herewith a certi. copy of the order passed by the Munsiff of Closepet in O.S. 190 of 29-30 on his file (Srinivasiah v D. C. Bangalore as well as a manuscript copy of ~~and to request you to~~ the plaint in the case for favour of opi to whether it is a fit c for moving the Chief Court under sec

List of enclosures....................

Copied by....................

Examined by....................

to revise the order passed.

~~The Deputy Comr Bangalore has been asked to send a copy of the plaint immediately which will be sent to Govt. as soon as it is received.~~ The matter may be kindly be treated as immediate.

[illegible]

To

The Deputy Commissioner,

Bangalore.

Sir, Law 44-286.

In continuation of this office letter N P. 4573/Law 44-29 dated 28th February 1930, regarding O.S. 190 of 29-30 on the file of the Munsiff of Closepet (Srinivasiah Vs Depu Commissioner, Bangalore and others), I have the honor to state that the question of filin a revision petition in the Chief Court from the order of the Munsiff regarding the maintainability of the suit is still under consideration. ~~A copy of the plaint is necessary for deciding this question and may kindly be sent immediately.~~

2. I may however suggest that in case the mortgage bond by Dodde Gowda is executed in favour of the Dewan of Mysore, as appears to be the case from the copy in the records sent with your letter of the 24th Febr 1930, it is the Government of -- Mysore that has to be made the defendant in the case and not the Deputy Commissioner, -- Bangalore, in which case the question of - notice under section 80 Civil Procedure Code becomes important since it is clear that due service of the statutory notice under the section is a condition precedent to the maintainability of any suit against Government whatever its nature may be.

3. As regards the opinion of the Advocate at Closepet stating that there is no valid defence to the suit. I am to state that the matter requires further ~~consideration~~ examn. From a perusal of the bond executed by Dodde Gowda in favour of the Dewan (vide paper 10 of the

f the records sent with your letter) it
ppears that section 7 clause (c) of the
and Improvement Loans Regulation 1890 applies,
n which case Government have the right to re-
over the amount due, out of the land " as if it
ere arrears of land revenue due in respect of
hat land". Consequently the land may be sold
ree from incumbrances created by the mortgagor
ver his interests in the land, even though such
harge has been created before the order granting
he loan. The effect of this is that the charge
n favour of Government becomes by statute a first
harge when the security given is the land for the
mprovement of which a loan is given under the Regu-
ation. In support of this, reference is invited to
he decision in I.L.R. 41 Madras 691 and to article
9 of the Mysore Revenue Manual Vol.(1).

4. In this view, I am of opinion that there is
valid defence to the suit and it is even now open
o the Deputy Commissioner to proceed to recover the
oan due to Government under section 7 (c) of the
egulation. The attention of the Advocate may be drawn
o this aspect of the matter and a suitable draft --
ritten statement prepared and submitted to this --
ffice for approval.

I have etc.,

Legal Remembrancer &
Secretary to Government
Law Department.

part of the official receiver in respect of which the Plaintiff was suing. Hence it was held that the suit was maintainable without a notice under section 80, Civil Procedure Code. The case in 20 Bom. 697 was based on a contract and has no application to the present case. The decision in - 7 Cal. 499 has been dissented from in later cases. There is, however, no case of the Chief Court which can be said to have a direct bearing on the present question and from the case - reported in 28, M. C. C. R., 197, it can fairly be inferred hat in its opinion, previous notice as required under secion 80 is necessary in all cases in which suits are brought gainst public officers in respect of acts purporting to have een done by them in their official capacity.

3. In the present case, in para. 5 of the Plaint it has een specifically alleged that the 2nd defendant has taken a ortgage of the property in suit and that he is hence impleadd as a party. There is thus clearly an allegation of an - ct done by the second defendant in his official capacity and n such a case previous notice seems to be imperative. No otice having been served the present suit is not maintainble in law. The Munsiff's finding to the contrary seems, herefore, to be unsustainable. ~~xx xxx~~.

4. In case Government should decide upon filing a revison petition against the Order of the Munsiff, the Deputy Comissioner of Bangalore may be requested ~~xxx~~ to send me a power and the necessary funds, before the 3rd roximo as the time for filing a revision petition is 60 days rom the date of the order.

5. The enclosures to your letter under reference are herewith returned.

I have the honor to be,
Sir,
Your most obedient servant,
M. Ramachandra Rao
Government Advocate.

In reply please refer to
No. 672

Tel. Address:—
"JURIST," Bangalore.

One file

OFFICE OF THE GOVERNMENT ADVOCATI
IN MYSORE,

Bangalore... 15th March 1930

FROM

M. RAMACHANDRA RAO, Esq., B.A., B.L.,
Government Advocate in Mysore,
Bangalori

[illegible] up dr. for filing [illegible] petn.

TO

The Secretary to the Government of
His Highness the Maharaja of Mysore,
Law Department,
Bangalore.

SIR,

14 15/3

With reference to your letter No. P.4809/Law.44-29 dated the 6th March 1930, I have the honor to state that on a careful consideration of the decision given by the Munsiff of Closepet, (in O. S. No.190 of 1929-30, Srinivasiah VS. The Deputy Commissioner, Bangalore), I am of opinion that it is a fit one for taking action under section 115 of the Code of Civil Procedure.

2. The Munsiff has based his decision on four cases, but a reference to them will show that the facts of these cases are distinguishable from the facts of the present case. In 1930, A.I.R., Bombay, 11, the public officer who was sued was a receiver appointed in an Insolvency proceeding and according to the wording of section 80, Civil Procedure Code, notice is necessary only if the public officer is sued in respect of any act purporting to have been done by him in his official capacity. The Judges held that there was no act which was alleged to have been done by the receiver prior to suit and that in consequence service of a notice on him before suit was unnecessary. In 48 All. 821 (827) also, the Judges say "It does not appear that any act or omission can be predicated on the part of the official receiver as one in respect of which the suit is being brought". Further the plaint in that case did not allege any act or omission on the

art

[illegible]
O.S. No 190 [illegible] 1929-30

[illegible] [illegible]
1. [illegible]
2 [illegible]
3 [illegible]

2. [illegible]
20.4.1926 [illegible]

3. [illegible]

4. 1 [illegible]

[illegible]

[illegible]
[illegible]
5 [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
6. [illegible] 26.4.1984 [illegible]
[illegible]
7. [illegible]
[illegible]
8 [illegible]
300-00 [illegible]. 30-00 [illegible]
9 [illegible]
[illegible] Rs 150-00
[illegible]
[illegible]
[illegible] Rs 150-00
[illegible] Rs 300-00
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible]

[illegible]
[illegible] 10[illegible]
[illegible] 36 [illegible] 2-12-0
[illegible]
[illegible]
[illegible]

Signed & verified in original

SREENIVASAIYA, B.A.,
ADVOCATE.

In all future communications please quote—
No. CB-L.P.46/29-30.
Enc. Two

OFFICE OF THE DEPUTY COMMISSIONER,
BANGALORE DISTRICT.

16

Dated, Bangalore, the 15th March 19

FROM

A. K. SYED TAJ PEERAN ESQ., B.A.,
Deputy Commissioner,
Bangalore District.

TO

P. Mahadevayya, Esq., B.A., B.L.,
Legal Remembrancer & Law Secretary to Government,
Bangalore.

SIR,

Subject :— Recovery of Land Improvement Loan advanced t
Dodde Gowda of Anigere village, Channapatna Taluk in 19

With reference to your letter No. P. 4810/Law.44-29 of th
6th instant on the above, I have the honour to submit herewith, in original report No. A1-474/29-30 dated 13-3-30 from the Sub-Division Officer, Closepet with its enclosure (written statement). The draft written statement is to be returned to the Sub-Division Officer by the 19th, the date fixed for filing the same in Court. Early orders of Government are solicited in the matter.

I have the honour to be,
Sir,
Your most obedient servant,

For Deputy Commissioner,
Bangalore Distri
(Absent from Head-Quarters)

13

Law 17/3

M.L.A.

In the Court of the Munsiff of Closepet

OS No 190 of 29-30

Plaintiff :- Sreenivasayya

~~of~~

Defendant - 2nd Deputy Commissioner Bangalore District etc

2nd Defendant's Prely. objection

[illegible] L.J. 91
[illegible] L.J. 280
Mys L.J. 320.
S. Bom. 362.
10 Notice ~~[illegible]~~ is wide enough to include ~~every~~ kind of suit.

9. I.C.
10. [illegible]

The plaint does not disclose that the requirements of Sec 80 of the C.P. Regulation has been complied with. The suit is not maintainable as against the 2nd Defendant & is liable to be dismissed with costs.

C. N. Sastry
Advocate for 2nd Deft.

13/11/29

Nots
[illegible] taken [illegible]
[illegible]
20/11/29

Reply

Plaintiff avers the service of notice under Sec 80. Hence the suit is maintainable.

Appendix B G—1

SUBJECT..

II Dft—

Section Law
File No. 44-
Serial No. 9

No. R 4994 C

Date No. of letter replied to..............................

General and Revenue Secretariat
( )
the 192

To

The Deputy Comr
Bangalore Dt

Date of issue.................... 17/3/30

Signed by.................... M. J. M.

Sir,

With reference to your letter No: C8-L.P. 46/29-30 dated 15th March 1930 forwarding a draft written statement to be filed in O.S. 590 of 29-30 on the file of the Munsiff of Anekal (Srinivasan vs D.C. Bangalore), I have the honour to return the same herewith duly approved.

Separate orders being issued for fixing

List of enclosures..............................

Copied by..............................

Examined by..............................

over

a revision petition in the Chief Court against the order of the Munsiff passed in the said case on 3rd Feby 1930.

The enclosures to your letter are herewith returned

I have etc

Legal Rr

17·3

Diary No. of letter replied to 47

General and Revenue Secretariat

the (192

Date of issue 21/3/30

Signed by M. N. S.

May this be

i Printed?

ii treated as a standing order ?

published in the Gazette,

English Part ?

nslated ?

laced at the disposal of the press ?

published in the Gazette,
Kannada Part ?

Sec Law

File No. 44

Serial No. 10.

Proceedings of the Government of
His Highness the Maharaja of Mysore.

Read –

Letter No. C8 - L.P. 46/29-30 dated 24th February 1930 from the Deputy Comr, Bangalore forwarding a copy of the order of the Munsiff of Closepet passed on 3rd Febr 1930 in O.S. 190 of 29-30 on his file (Srinivasiah vs D.C. Dire ~~Order Thereon No.~~ & others) and recommends that a revision petition may, be filed against the said order in the chief court

Order No. 5049-52

Sanctioned. The Govt Advocate is requested to take steps in time to move the Chief in the matter to send to the Govern......nt Advocate immediately a power and necessary Funds.

P M 1 Secy to Govt.
Law Dept.

Mo
17.3

The Deputy Commr, Bangalore.

The Govt Advocate with cer copy of the order of the Minister

3) The Comptroller to Govt

4) The Revenue Commr in Mys.

R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

578

In reply please refer to
No. 722

Tel. Address:—
"JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore ~~13th~~ 15th June 1931

FROM

M. RAMACHANDRA RAO, Esq., B.A., B.L.,
Government Advocate in Mysore,
Bangalore.

To

The Secretary to the Government
of H. H. The Maharaja of Mysore,
Law Department, BANGALORE.

Sir,

With reference to Government Order No. P.5049-52/ Law.44-29-10 dated the 21st March 1930, I have the honor to state that Civil Revision Petition No. 325 of 1929-30 on the file of the High Court of Mysore, (The Deputy Commissioner, Bangalore District, VS. Srinivasaiya) came on for final disposal on 12th June 1931 and orders were passed allowing the Petition by Government.

2. A copy of the Judgment has been applied for and the same will be forwarded to Government as soon as it is

235
P 8/31
24

In reply please refer to
No. 26

Tel. Address :—
"JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore 14th July 1931.

rom

A. R. Nageswara Iyer, Esq., B.A., B.L.,
Government Advocate in Mysore,
Bangalore.

To

The Chief Secretary to the Government
of H. H. the Maharaja of Mysore,
Bangalore.

CHIEF SECRETARY
15 JULY 1931

Sir,

With reference to Government Order No. P. - 5049-52/Law. 44-29-10, dated the 21st March 1930, and in continuation of this office letter No.728 dated the 15th June 1931, I have the honor to forward herewith, for the sanction of Government, a Bill of Mr. M. Ramachandra Rao, for Rs.50-0-0 only, being his remuneration for professional services rendered on behalf of Government, in Civil Revision Petition No. 325 of 1929-30 on the file of the High Court of Mysore, (The Deputy Commissioner,

Commissioner, Bangalore District, versus. - Srinivasaiya).

I have the honor to be,
Sir,
Your most obedient servant,

Government Advocate.

Appendix F G—1]

SUBJECT.........................

Section

File No.

Serial No.

Diary No. of letter replied to..............................

No.

To

The Govt. Advocate

General and Revenue Secretariat

( )

the *193*

Date of issue 20/7/31

Signed by

Sir, With reference to your letter No 26 ~~of~~ dated the 14th July 1931, forwar ~~I am directed~~ for sanction a bill for Rs 50/- of Mr. ~~to invite reference to your~~ Mr. M. Ramachandra Rao for services ~~letter no 729 dated 15th June 19~~ rendered as Govt Advocate in the ~~re:~~ Civil Revision petition no. 31 of 1929.30 on the file of the High Court of Mysore (Deputy C vs Srinivasaiya), I am directed to enquire when the Copy of the Judgment in the case, promised in your letter No 729 dated 15th June 1931 ~~may be expected~~ may be expected.

I have the

List of enclosures..............................

Copied by

Examined by..............................

ISD 16/7

16/7 for Ch. Secy

17th July 1931./

The Government Advocate,
Bangalore.

With reference to your letter No.26 dated the 14th July 1931, forwarding for sanction a bill for Rs.50/- of Mr. M. Ramachandra Rao for services rendered as Government Advocate in the Civil Revision petition No.325 of 1929-30 on the file of the High Court of Mysore (Deputy Commissioner, Bangalore, vs Srinivasaiya, I am directed to enquire when the copy of the judgment in the case, promised in your letter No.729 dated 15th June 1931 may be expected.

I have the honour to be,
Sir,
Your most obedient servant,

for Chief Secretary to Government.

N30.2.

In reply please refer to
No. 47

Tel. Address:—
'JURIST,' Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore ~~21st~~ July 1931.
22nd

From

The Government Advocate
in Mysore, BANGALORE.

To

The Chief Secretary to the Government
of H. H. The Maharaja of Mysore,
BANGALORE.

JUL 1931

Sir,

With reference to your letter No. P.424/Law. dated the 17th/20th July 1931, I have the honor to state that a copy of the order in Civil Revision Petition No. 325 of 1929-30 on the file of the High Court of Mysore, (The Deputy Commissioner, Bangalore VS. Srinivasaiya) was applied for on the 15th instant and that the same will be forwarded to you, as soon as it is received in this office.

I have the honor to be,
Sir,
Your most obedient servant,

Government Advocate.

CSN.

In reply please refer to
No. 75

Tel. Address:
"JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

331/29

Bangalore 30th July 1931 *19*

5113

From

A. R. Nagesvara Iyer, Esq., B.A., B.L.,
Government Advocate in Mysore,
Bangalore.

To

1931

The Chief Secretary to the Govt.
of H. H. the Maharaja of Mysore,
Bangalore.

Sir,

In continuation of this office letter No. 47, dated the 22nd July 1931, I have the honor to forward herewith, for the information of Government, a copy of the order passed in Civil Revision Petition No. 325 of 1929-30 on the file of the High Court of Mysore. (The Deputy Commissioner, Bangalore District vs. Srinivasiah).

I have the honor to be,
Sir,
Your most obedient servant,

Nagesvara Iyer

Government Advocate.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Friday, the 12th day of June 1931.

PRESENT

Mr. JUSTICE D.K. RAMA RAO

and

Mr. JUSTICE G. SREENIVASA IYER.

CIVIL REVISION PETITION CASE NO.325 of 1929 - 30.

The Deputy Commissioner, .. 2nd Defendant ..PETITIO
Bangalore District.
(By Mr. M. Ramachandra Rao, Government Advocate)

- Vs -

Srinivasaiya .. Plaintiff .. OPPONENT.
(By Mr. H. Krishnappa).

Civil Revision Petition against the order dated 3rd ebruary 1930 passed by the Munsiff of Closepet in Origina uit No.190 of 1929-30.

This Civil Revision Petition coming on for hearing n Thursday the 25th day of September 1930, the Court ronounced the following:-

ORDER.

The suit is to recever money due on a hypothecation bond. The petitioner(second defendant) is the Deputy - Commissioner of Bangalore. He has been impleaded as a party on behalf of Government, as the holder of a charge on the hypothecated property for the loan advanced by - Government under the Land Improvement Loans Regulation.

In limine an objection was taken on his behalf to the maintainability of the suit, on the ground of vital defect due to ~~the~~ absence of the statutory notice prescribed by section 80 of the Civil Procedure Code. It is not disputed that the act or occasion on account of which the second defendant has been made a party is one touching his official capacity. The argument of the - opponent (plaintiff) is, that no notice at all is - necessary since the act which gives rise to cause of - action against the second defendant does not constitute a tort but relate to a contract, and that as such - section 80, Civil Procedure Code, is inapplicable to the fa
f the case. This contention prevailed in the trial court

The point for consideration is whether section 80 of
he Civil Procedure Code is restricted in its scop
f tortious acts and the like, and contemplates an exclusio
f suits based on contract from its operation, see 7 Cal.
199 and 20 Bom.697. This question seems to us to be con-
uded by the decision of this court in 28 Mys.C.C.R.197;
may also refere to the observations in 2 Mys.L.J.280 and
Mys.C.C.R.60. We do not think that the learned Munsi
correct in his interpretation of the judgment in 28 Mys.
C.R.197. No doubt that case contained a prayer for inju
on, but preceding it there was also a prayer for declarat
right; obviously, in such cases the grant of an injunct
sted on the grant of the declaration sought, 2 Mys.L.J.280
34) and 51 Bom.725(745). The learned Judges who decided
Mys.C.C.R. 197 were unable to agree with the view taken
Bombay High Court, and they stated distinctly "that the
ice required by section 80 is imperative

served in all cases, even where an injunction is asked for". 2 Mys.L.J.280 related to an analogous provision in the Municipal Regulation. The lower court has evidently overlooked the observations found on page 283 where it is stated, "The immediate object of the suit must be to obtain redress for some act done or purporting to have been done under colour of the Regulation. This does not mean only redress in the shape of monetary compensation for wrongful acts, as was held in some cases; there is no warrant in the language used for restricting the scope of the provision to suits for this kind of relief". The object of the Legislature in enacting section 80 is evidently to give sufficient opportunity and breathing time to the Government of the public officers concerned to reconsider their legal position when the same is challenged, and if possible avoid litigation involving public revenues, 24 Mad.279(282), 40 Bom.392(396), 28 All.600(606) and 25 Cal.239(244). If that is so there can be no reason whatever to make distinctions among suits, while the words in the section are in general and wide terms and their ordinary and natural meaning does not permit any classification of cases into groups. As regards British India, whatever may have been the ~~differences~~ differnces in the opinions expressed in the past by the various High Courts, they are now set at rest by the recent ruling of the Privy Council in 51 Bom.725. At pages 743 to 749 their Lordships summarise the reasons given by the High Courts and conclude thus, "The High Courts of Calcutta, Madras and Allahabad have now agreed in deciding that these sections are to be strictly complied with and are applicable to all forms of action and all kinds of relief. ... The act, albeit a Procedure Code, must be read in accordance with the natural meaning of its words. Section 80 is express, explicit and mandatory, and it admits of no implications or exceptions. A suit in which inter alia an injunction is prayed is still 'a suit' within the words of the section, and to read any qualification into it is an encroachment on the function of legislation. Considering how long these and similar words have been read throughout most of the Courts in India in their literal sense, it is reasonably to suppose that the section has not been found to work injustice, but, if this is not so, it is a matter to be rectified by an amending Act. Their Lordships think that this reasoning is right. .... There was no reason for not complying with the words of the section, except over confidence in what may be called the Bombay view of it."

We therefore hold that a notice to the Second defendant is necessary under Section 80 of the Civil Procedure Code. The order of the lower court is accordingly set aside. The second defendant is entitled to his costs in this court. There are also other defendants in the suit with reliefs claimed against them; the further proceedings are within the competency of the lower court, to which the records will be returned.

Sd/- D.K. Rama Rao,
Judge.

Sd/- G. Sreenivasa Iyer,
Judge.

Costs

Amount of costs payable by the opponent~~s~~(plaintiff) to the petitioner(2nd defendant)in this Court is:-

		Rs.	a.	p.
Court fee on revision petition	..	3	0	0
" power of attorney	..	2	0	0
" processes	..	0	10	0
" copy of order		0	10	0
Advocate's fee	..	10	0	0 ✓
Fees for copying	..	1	12	0
Total		Rs. 18	0	0

Sd/- N. B. Srinivasiengar
Dy. Registrar.

'Copy'

Dy. Registrar.

Section Law
File No. 44-29
Serial No. 11.

iary No. of letter replied to

General and Revenue Secretariat

(   )

the   *193*

ate of issue 19/8/31

igned by

May this be

i. printed?

ii. treated as a standing order?

iii. published in the Gazette English Part?

iv. translated?

v. placed at the disposal of the press?

vi. published in the Gazette, Kannada Part?

List of enclosures

Copied by 18/8

Examined by

Proceedings of the Government of His Highness the Maharaja of Mysore.

Read—

1. G.O. No. P. 5049-52 / Law 44-10 dated 21st March 1930, Sanctioning the filing of a revision petition against the order of the Closepet Mu[illegible] in O.S. 190/1929-30 (Srinivasaiah vs D.C. Bangalore and others) arising out of the grant of a land improvement

~~Order Thereon No.~~ loan to Doddegowda of Anigere village, Channapatna Taluk.

2: Letter No. 26 dated 14 July '31 from the Govt. Ad. forwarding for sanction, a bill for Rs 50/- of Mr. M. Ramachandra Rao, being remuneration for professional services rendered as Govt. Advocate in the

[illegible]

the High Court of Mysore fixed per G.O. read above.

P 1088-91 (1

Order:-

The Advocate's fee was as per order of the H. Court by Rs 10/-. But in view of the [illegible] point of law involved [illegible] Case, Govt are pleased sanction a fee of Rs 50/- as [illegible] in the bill, as a Special Case.

The R.C. is requested to [illegible] direct to the Comptroller [illegible] Source out of [illegible] is to be met

Genl Secy to Govt

1) The Govt. Ad. [illegible]
2) Comptroller to Govt
3) D.C. B'l

EEDINGS OF THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

Read :—

Government Order No.P.5049-52/Law.44-29-10 dated 21st March 193 sanctioning the filing of a revision petition against the order of the Closepet Munsiff in O.S. 197/29-30 (Srinivasaiah vs Deputy Commi sioner, Bangalore and others) arising out of the grant of a land improvement loan to Doddegowda of Anigere village, Chennapatna Taluk

2. Letter No.26 dated 14th July 1931 from the Government Advoca forwarding for sanction, a bill for Rs.50/- of Mr. N.Ramachandra Rao being his remuneration for professional services rendered as Government Advocate in the Civil Revision petition No.325/29-30 in the Hig Court of Mysore, filed as per Government Order read above.

Order No.

Dated, Bangalore, 18th August 1931.

The Advocate's fee allowed as per order of the High Court is only Rs.10/-. But in view of the important point of law involved in the case, Government are pleased to sanction a fee of Rs.50/- as claimed in the bill, as a special case.

2. The Revenue Commissioner is requested to point out direct to the Comptroller the source out of which the charge is to be met.

For General Secretary to Government.

To

The Government Advocate with the bill.
The Comptroller to Government through Financial Secretariat.
The Deputy Commissioner, Bangalore District.
The Revenue Commissioner in Mysore.

Section

File No.

Serial No.

No. 1445 (1)

Diary No. of letter replied to..................

General and Revenue Secretariat
(   )
the   193

Date of issue 4/9/31

Signed by

To

The D.C. B'lore

Sir,

In continuation of the G.O. No. P. 1088-9 Law Genl. 31.14 dated 19.8.31 sanctioning a fee of Rs. 50/- to Mr. M. Ramachandra Rao for the professional services rendered in Civil Revision petition 325/29-30 on the file of the H.Ct. Mysore (Srinivasaiya vs D.C. Bangalore arising out of O.S. 190/29-30 on the file of the [illegible] Munsiff) I am directed to forward

List of enclosures..................

Copied by..................

Examined by..................

[over

WD 02559—GPB—25,000—25-6-30

~~Rev. Sessions~~, and to

that necessary action

~~[illegible] with the Offr. B'lore~~

be taken ~~to recover the~~

~~amount by the Court~~

5 Pet. ~~I am to add that~~

Suit in the Clopes Munsiff's

~~will have to be~~ dismissed with costs

against ~~the De~~ yourself, ~~with~~ [illegible] ~~Costs and to the~~ to execute the decree as to costs

so awarded, ~~in~~ both the Courts ~~may be executed in time~~.

~~to be recovered by~~

~~proceedings~~ by means of proper proceedings in execution

have etc

Genl Secy
31/8.

The

The Deputy Commissioner,
Bangalore District.

In continuation of the Government Order No.P.1088-9-Law. L-29-14 dated 19th August 1931 sanctioning a fee of Rs.50/- Mr.M.Ramachandra Rao for the professional services rendered Civil Revision petition No.325/29-30 on the file of the gh Court of Mysore (Srinivasaiya Vs DeputyCommissioner, ngalore) arising out of O.S.190/29-30 on the file of the Closepet Munsiff, I am directed to forward herewith copy of the order of the High Court and to request that necessary action may be taken to get the suit in the Clospet Munsiff's Court, dismissed with costs as against yourself, and to execute the decree as to costs thus awarded in both the courts by means of proper proceedings in execution.

I have the honor to be,
Sir,
Your most obedient servant,

For General Secretary to Government.